

Captain Justin Peters

July 15, 2024

1                   UNITED STATES DISTRICT COURT  
2                   WESTERN DISTRICT OF TEXAS  
3                   AUSTIN DIVISION

4                   UNITED STATES OF AMERICA         )  
5    )  
6    )  
7    ) NO.  
VS.    ) 1:23-CV-00853-DAE  
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11                   VIDEOTAPED DEPOSITION OF  
12                   CAPTAIN JUSTIN PETERS  
13                   JULY 15, 2024  
14                   (REPORTED REMOTELY)  
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16                   ANSWERS AND DEPOSITION OF CAPTAIN JUSTIN  
17                   PETERS, produced as a witness at the instance of the  
18                   Defendant, taken in the above-styled and -numbered  
19                   cause on JULY 15, 2024, from 9:06 a.m. to 10:41  
20                   a.m., before CHARIS M. HENDRICK, a Certified  
21                   Shorthand Reporter in and for the State of Texas,  
22                   witness located at the United States Department of  
23                   Justice, 150 M Street NE, Washington, DC, pursuant  
24                   to the Federal Rules of Civil Procedure, and the  
25                   provisions stated on the record or attached hereto.

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A P P E A R A N C E S

FOR THE PLAINTIFF:

MS. KIMERE KIMBALL  
MS. HEATHER S. KENNEALY  
MS. KAITALYN E. CHARETTE  
UNITED STATES DEPARTMENT OF JUSTICE  
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FOR THE DEFENDANTS:

MR. KYLE S. TEBO  
MR. JOHNATHAN STONE  
OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 12548, MC-009  
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ALSO PRESENT: MR. MIGUEL BANUELOS - VIDEOGRAPHER

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1 Coast Guard did not fill them.

2 Q. Understood. Approximately, how many other  
3 requests were there?

4 A. They were still the same two requests, but  
5 those requests contained additional capabilities for  
6 support to the southwest border.

7 Q. Understood. So the additional requests  
8 that you were referring to are -- were to do with  
9 the -- were to do with the two requests for the  
10 deployable specialized forces; is that correct?

11 MS. KIMBALL: Objection. Form.

12 A. The deployable specialized forces were one  
13 capability that were requested; that is correct.

14 (Exhibit 4 marked.)

15 Q. (By Mr. Tebo) Captain Peters, I am going  
16 to share-screen for just a moment. Do you see a  
17 document before you that is titled Plaintiff United  
18 States' Initial Disclosures?

19 A. Yes.

20 Q. I am scrolling down to Page 2. Do you see  
21 your name and position listed besides Bullet Point  
22 Number 10?

23 A. Yes.

24 Q. I am going to read from that paragraph.  
25 Captain Peters has knowledge of the United States

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1 Coast Guard missions and operational capabilities on  
2 the Rio Grande.

3 Did I read that correctly?

4 A. Yes, you did.

5 Q. Do you have knowledge of Coast Guard  
6 missions and operational capabilities on the Rio  
7 Grande River?

8 A. I have general knowledge of those -- those  
9 things, yes.

10 Q. Have you been asked to testify at trial on  
11 any subject matter other than Coast Guard missions  
12 and operational capabilities on the Rio Grande  
13 River?

14 MS. KIMBALL: Objection. Calls for  
15 work product. The witness is instructed not to  
16 answer.

17 Q. (By Mr. Tebo) Let me rephrase that  
18 question -- question slightly. Are you prepared to  
19 testify at trial on any subject matter other than  
20 Coast Guard missions and operational capabilities on  
21 the Rio Grande River?

22 MS. KIMBALL: Objection. Calls for  
23 work product. The witness is --

24 MR. TEBO: I didn't ask any -- that  
25 question didn't ask anything about confidential

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1 discussions with DOJ attorneys.

2 Q. (By Mr. Tebo) Just are you prepared to  
3 testify at trial concerning subject matter other  
4 than what is listed in your disclosure?

5 MS. KIMBALL: Objection. Calls for  
6 work product. The witness is instructed not to  
7 answer.

8 MR. TEBO: I'm going to take a quick  
9 break here.

10 THE VIDEOGRAPHER: Going off the  
11 record, 10:25 a.m.

12 (Recess taken.)

13 THE VIDEOGRAPHER: Back on the record,  
14 10:35 a.m. Go ahead.

15 Q. (By Mr. Tebo) Thank you. All right.  
16 Captain Peters, sorry for the delay. I was asking  
17 you a little bit about the Plaintiff's Disclosures  
18 in this case. So I am going to read your disclosure  
19 one more time just so it's fresh in your mind.  
20 Captain Peters has knowledge of the USCG missions  
21 and operational capabilities on the Rio Grande.

22 Did I read that correctly?

23 A. Yes, you did.

24 Q. And is that all that you intend to testify  
25 concerning at trial?

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1                           MS. KIMBALL: Objection. Calls for  
2 work production. The witness is instructed not to  
3 answer.

4                           MR. TEBO: Counsel, could I ask you a  
5 little bit about the basis of your objection? So  
6 you're -- are you citing -- you are citing the  
7 work-product privilege?

8                           MS. KIMBALL: That's correct. Anything  
9 that the witness has done to prepare with counsel or  
10 at the direction of counsel is all work product.

11                          MR. TEBO: I am not -- you understand I  
12 am not asking about the contents of any privileged  
13 documents or anything like that?

14                          MS. KIMBALL: It's -- it's not just  
15 privileged documents. It's anything that he has  
16 discussed --

17                          MR. TEBO: Or conversations; I'm not --  
18 I'm not trying to pry into confidential  
19 conversations he's had between himself and DOJ  
20 attorneys or anything like that. I am just asking  
21 about his disclosure and the subject matter for  
22 which he has been disclosed.

23                          MS. KIMBALL: So he didn't do the  
24 disclosure; that's the attorneys' disclosure.  
25 And --

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1                           MR. TEBO: The disclosure is -- is not  
2 -- is not privileged work product.

3                           MS. KIMBALL: I am -- I am not  
4 suggesting it is, but --

5                           MR. TEBO: Okay.

6                           MS. KIMBALL: -- I am saying that he  
7 didn't draft the disclosure.

8                           MR. TEBO: Correct.

9                           MS. KIMBALL: And anything that he has  
10 done to prepare for trial is necessarily work  
11 product. The definition of work product is the work  
12 that -- attorney does to prepare for trial. So  
13 anything that he has done in order to prepare for  
14 trial is necessarily something done with counsel or  
15 at the direction of counsel. And so the -- I think  
16 the work-product privilege covers it.

17                          MR. TEBO: I want to just make crystal  
18 clear that I'm not asking him about specific  
19 preparations. I am not trying to learn the US's  
20 legal strategy. I am just asking him about the  
21 subject matter of his testimony at trial; do you  
22 understand that?

23                          MS. KIMBALL: The only thing he could  
24 possibly know about what he might be expected to  
25 testify to at trial is something he would know from

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1 his communication with counsel in preparation for  
2 trial. It's not, you know, within the -- the normal  
3 course of his duties. He's not deciding what to  
4 testify to. That's exclusively within the  
5 attorney's domain.

6 MR. TEBO: Well, the US, with this 26A  
7 disclosure, has communicated to Texas at least  
8 something about what he intends to testify at trial,  
9 correct?

10 MS. KIMBALL: We provided the necessary  
11 disclosure under the rule. That does not waive our  
12 work-product privilege in any way.

13 MR. TEBO: And I am not asking you to  
14 waive your work-product privilege in inquiring about  
15 the disclosure; that's what I am saying.

16 MS. KIMBALL: Except you are not. You  
17 are not inquiring about the disclosure. You're  
18 asking about --

19 MR. TEBO: I am just ask --

20 MS. KIMBALL: -- he expects to testify  
21 to.

22 MR. TEBO: I am just --

23 MS. KIMBALL: And that's --

24 MR. TEBO: -- asking if --

25 MS. KIMBALL: -- question --

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1                           THE REPORTER: We're talking over each  
2 other, so one at a time, please.

3                           MR. TEBO: Okay. Just get this on the  
4 record. I am just asking him about whether the  
5 subject matter for which he has been disclosed to  
6 testify at trial is the subject matter that he will  
7 testify concerning at trial. And that's the purpose  
8 of the disclose --

9                           MS. KIMBALL: The -- the only possible  
10 way that he could know that is through  
11 communications with counsel and through discussion  
12 of counsel's strategy for trial.

13                           MR. TEBO: I just want to say --

14                           MS. KIMBALL: You have disclosure --

15                           MR. TEBO: -- I do not --

16                           MS. KIMBALL: -- if -- if he testifies  
17 to something outside the disclosure, then you are  
18 certainly within your right to object to that  
19 testimony at trial on that basis. But he cannot  
20 testify as we sit here today as to what he may  
21 testify to at trial because that's exclusively a  
22 question into what the attorney has prepared him for  
23 and what the attorney's strategy is for trial. It's  
24 -- it's a matter that is purely work product.

25                           MR. TEBO: So do I understand that you

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1 are standing by the work-product privilege and  
2 instructing the witness not to answer the question;  
3 is this -- is what's in your disclosure all you  
4 intend to testify about at trial?

5 MS. KIMBALL: Yes. It's -- it's work  
6 product. It's potentially attorney/client --

7 MR. TEBO: Okay. Good. That's all --  
8 that's all I need to understand. I will proceed  
9 with the deposition.

10 I don't have any other questions for  
11 Captain Peters. But before I pass the witness, I  
12 would just like to state for the record that Texas  
13 was impeded from learning the facts that the witness  
14 may testify to at trial and Texas may take up this  
15 matter with the magistrate.

16 MS. KIMBALL: I will -- I will respond  
17 that Texas wasn't impeded from learning the facts  
18 that he may testify to at trial. Texas was impeded  
19 from learning counsel's trial strategy and how he  
20 may have been prepared for --

21 MR. TEBO: I did not ask any questions  
22 about y'all's trial strategy. I just asked him  
23 about what he would testify to at trial; that's it.

24 MS. KIMBALL: Uh-huh.

25 MR. TEBO: That -- with that on the

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1 record, I will pass the witness.

2 MS. KIMBALL: No questions.

3 THE REPORTER: And then, Ms. Kimball,  
4 did you need to --

5 MS. KIMBALL: We will read and sign.

6 THE REPORTER: Okay. And, Ms. Kimball,  
7 did you need to order a copy of the transcript?

8 MS. KIMBALL: Yes, please.

9 THE REPORTER: Thank you.

10 MS. KIMBALL: I will have our  
11 procurement people get in touch. Is the information  
12 that was in the Zoom link, is that the information  
13 that's best to contact you for ordering the  
14 transcript?

15 THE REPORTER: I'm unsure what you're  
16 looking at, so can we go off the record first?

17 MS. KIMBALL: Oh, sure.

18 THE VIDEOGRAPHER: Going off the  
19 record, 10:41 a.m.

20 (End of Proceedings, 10:41 a.m.)

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